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DEC 1-2 2006

OFFICE OF PETITIONS

In re Patent No. 7,098,311 :
Koontz et al. : DECISION ON REQUEST
Issue Date: August 29, 2006 : FOR
Application No. 09/874,162 : RECONSIDERATION OF
Filed: June 4, 2001 : PATENT TERM ADJUSTMENT
Attorney Docket No. 05311-024001 :
Title: FUSION OF JAZF1 AND JJAZ1 :
GENES IN ENDOMETRIAL :
STROMAL TUMORS :

This is a decision on the "LETTER REGARDING PATENT TERM ADJUSTMENT," filed November 6, 2006. Patentees request that the patent term adjustment indicated on the face of the Letters Patent be corrected from one hundred and eighty-two (182) days. Petitioner has not set forth what length of term he believes to be correct, and merely states that 182 days "appears to be longer than appropriate."

The request for correction of the patent term adjustment indicated in the patent is DISMISSED.

Patentees are given **TWO MONTHS** to respond to this decision. No extensions of time will be granted under § 1.136.

On August 29, 2006, the above-identified application matured into U.S. Patent No. 7,098,311, with a revised Patent Term Adjustment of 182 days. It appears that patentees are pointing to the calculation of 703 days of PTO delay as being calculated

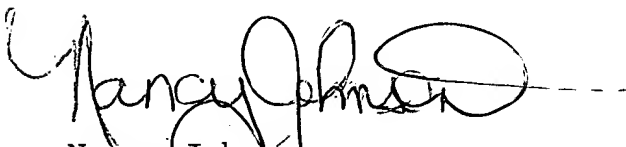
for issuance beyond three years from the filing of the application and as an error.

A review of the record confirms that eight-hundred and sixteen (816) days were entered for Office delay in issuing the patent pursuant to § 1.702(b). Furthermore, this is the correct period of adjustment for the delay. It is noted that the instant patent issued 3 years and 816 days after its filing date. However, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, it was properly concluded that a total of 113 days overlapped. Thus, the additional non-overlapping period of 703 days was entered for Office delay in issuing the patent.

In view thereof, the patent properly issued with a revised patent term adjustment of 182 days (816 days of Office delay reduced by 634 days of applicant delay).

To the extent that this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions